

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ALFRED ROSS, JR.,

PLAINTIFF

V.

NO. 4:04CV170-P-D

SUNFLOWER COUNTY SHERIFF'S OFFICE, ET AL,

DEFENDANTS

ORDER DISMISSING COMPLAINT IN ACCORDANCE WITH RULE 25

This case initially had three defendants: the Sunflower County Sheriff's Office, Sunflower County Sheriff James Haywood, and Sunflower County Deputy Sheriff Joseph Beck. On October 7, 2004, an order was issued dismissing with prejudice the Sunflower County Sheriff's Department and Haywood as defendants. On January 9, 2006, Beck's attorney filed a suggestion of death, stating that Beck had died of an apparent heart attack in December 2005. The suggestion of death was served on the court and the plaintiff on January 9, 2006.

Rule 25(a)(1), Federal Rules of Civil Procedure states as follows:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representative of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death ... the action shall be dismissed as to the deceased party.

No motion for substitution was made within 90 days of the filing of the suggestion of death of defendant Joseph Beck. Accordingly, this action is dismissed as to that defendant. Since Beck was the sole remaining defendant, it is further ordered that the cause be dismissed with prejudice.

SO ORDERED, this the 12th day of April, 2006.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

